

Recording Requested By:

College for Certain, LLC - Aspire Public Schools
1001 22nd Avenue; Suite 100
Oakland, California 94606

When Recorded, Mail To:

Alameda County Department
of Environmental Health
1131 Harbor Bay Parkway, Suite 250
Alameda, California 94502-6577
Attention: Paresh Khatri

U.S. Environmental Protection Agency, Region 9
Mail Code WST-5
75 Hawthorne Street
San Francisco, CA 94105
Attention: Ms. Carmen Santos

**COVENANT AND ENVIRONMENTAL RESTRICTION ON
1009 66th Avenue, Oakland, California**

This Covenant and Environmental Restriction on Property (this "Covenant") is made as of the ____ day of _____, 20__ by College for Certain, LLC - Aspire Public Schools ("Covenantor") who is the Owner of record of that certain property situated at 1009 66th Avenue in the City of Oakland, County of Alameda State of California, which is more particularly described in Exhibit A (Legal Description) attached hereto and incorporated herein by this reference (such portion hereinafter referred to as the "Site"), for the benefit of the Alameda County Department of Environmental Health (ACDEH) and U.S. Environmental Protection Agency (U.S. EPA), Region 9 with reference to the following facts:

A. The soil and groundwater at the Site have been affected by hazardous materials.

B. Contamination of the Site. Soil and groundwater at the Site was contaminated by operations previously conducted by Pacific Electric Motors (PEM). These operations resulted in contamination of soil by arsenic, lead, and polychlorinated biphenyls (PCBs), total petroleum hydrocarbons as gasoline (TPHg), total petroleum hydrocarbons as diesel (TPHd), total petroleum hydrocarbons as motor oil (TPHmo), and benzene, toluene, ethylbenzene, and total xylenes (BTEX). Groundwater quality at the Site was also affected TPHg and BTEX. These chemicals constitute hazardous materials as that term is defined in Health & Safety Code Section 25260.

Soil Remediation

Between November 2009 and August 2010, soil excavation activities were completed at the Site accordance with the following documents:

- The revised Corrective Action Plan dated July 17, 2009 as approved by ACDEH. This work resulted in the removal of approximately 8,900 tons of affected soil from the Site that was transported to either Waste Management's Kettleman Hills Class I Landfill located in Kettleman City, California or Republic Waste's Vasco Road Class II Landfill located in Livermore, California.
- The revised CAP was approved by the Alameda County Department of Environmental Health (ACDEH) in their letter to Aspire Charter Schools dated, August 13, 2009.
- The Toxic Substances Control Act (TSCA) Self-Implementing Cleanup Plan ("the SICP"). The scope of work for the SICP was originally presented in a letter from LFR Inc. (now fully integrated in to ARCADSI) to the U.S. Environmental Protection Agency (U.S. EPA), dated October 23, 2009.
- The SICP received conditional approval from the U.S. EPA in its letter to Aspire dated November 13, 2009 ("Approval Letter"; U.S.EPA 2009). The conditions provided in the Approval Letter were addressed in letter transmitted by LFR to the U.S. EPA, dated November 18, 2009. The scope of the SICP was further refined in an e-mail message from representatives of the U.S. EPA to LFR, dated November 25, 2009.
- Implementation of the Toxic Substances Control Act Self-Implementing Cleanup Notification at the Former Pacific Electric Motors Facility, 1009 66th Avenue, Oakland, California, dated August 12, 2010.
- The PCB Cleanup Completion Report, 1009 66th Avenue, Oakland, California Dated July __, 2012

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To ensure that the removal activities successfully met the cleanup goals, the 95% UCL of the confirmation soil sample data was calculated for each chemical of concern and compared with the respective cleanup goal. The results of this analysis indicated that concentrations of TPHmo and PCBs remained in soil at the Site at concentrations greater than the cleanup goals. The potential human health risks associated with the presence of PCBs or TPHmo will be mitigated by the installation of the TSCA Cap. A description of the TSCA Cap is provided in Exhibit B. The description of the TSCA Cap also includes map illustrating the locations of soil samples that contained concentrations of PCBs at concentrations that exceeded the site specific clean-up criteria. As presented in the TSCA Cap description, approximately 18-inches of the surficial soil was treated by adding 5-percent of cement across the entire property. The cement treatment was conducted to increase the strength and lower the moisture content of the soil to accommodate the redevelopment of the property.

The details regarding the soil removal that took place at the Site was summarized in the following report:

- Soil Removal Action Completion Report dated, September 15, 2010

Groundwater Remediation. The fuel-affected groundwater at the Site was remediated by an air-sparging-soil vapor extraction system (AS-SVE). Groundwater monitoring is being conducted on a quarterly basis and is reported to the ACDEH on a quarterly basis in conjunction with the groundwater monitoring plan for the Site. The evaluation and assessment for closure of the groundwater remediation will continue under the groundwater monitoring plan for the Site.

C. Exposure Pathways. The contaminants addressed in this Covenant are present in soil at the Site. Without the mitigation measures which have been performed on the Site, exposure to these contaminants could take place via in-place contact, resulting in dermal contact, inhalation, or ingestion by humans. The risk of public exposure to the contaminants has been substantially lessened by the remediation and controls described herein.

D. Adjacent Land Uses and Population Potentially Affected. The Site is used for a charter school and is adjacent to residential and industrial/commercial land uses.

E. Full and voluntary disclosure to the ACDEH and U.S. EPA of the presence of hazardous materials on the Site has been made and extensive soil and groundwater sample collection and analysis have been conducted at the Site.

F. Covenantor desires and intends that in order to benefit the ACDEH and U.S. EPA, and to protect the present and future public health and safety, the Site shall be used in such a manner as to avoid potential harm to persons or property that may result from hazardous materials that may have been deposited on portions of the Site.

G. Covenantor shall implement an Operation and Maintenance Plan (Exhibit C) to maintain the integrity of the surface cover at the Site. Should the cap require repairs, the repairs will be completed in accordance with the TSCA Cap included as Exhibit B.

ARTICLE I
GENERAL PROVISIONS

1.1 Provisions to Run with the Land. This Covenant sets forth protective provisions, covenants, conditions and restrictions (collectively referred to as "Restrictions") upon and subject to which the Site and every portion thereof shall be improved, held, used, occupied, leased, sold, hypothecated, encumbered, and/or conveyed. The restrictions set forth in Article III are reasonably necessary to protect present and future human health and safety or the environment as a result of the presence on the land of hazardous materials. Each and all of the Restrictions shall run with the land, and pass with each and every portion of the Site, and shall apply to, inure to the benefit of, and bind the respective successors in interest thereof, for the benefit of the ACDEH and U.S. EPA and all Owners and Occupants. Each and all of the Restrictions are imposed upon the entire Site unless expressly stated as applicable to a specific portion of the Site. Each and all of the Restrictions run with the land pursuant to section 1471 of the Civil Code. Each and all of the Restrictions are enforceable by the ACDEH and U.S. EPA.

1.2 Concurrence of Owners and Lessees Presumed. All purchasers, lessees, or possessors of any portion of the Site shall be deemed by their purchase, leasing, or possession of such Site, to be in accord with the foregoing and to agree for and among themselves, their heirs, successors, and assignees, and the agents, employees, and lessees of such owners, heirs, successors, and assignees, that the Restrictions as herein established must be adhered to for the benefit of the ACDEH and U.S. EPA and the Owners and Occupants of the Site and that the interest of the Owners and Occupants of the Site shall be subject to the Restrictions contained herein.

1.3 Incorporation into Deeds and Leases. Covenantor desires and covenants that the Restrictions set out herein shall be incorporated in and attached to each and all deeds and leases of any portion of the Site. Recordation of this Covenant shall be deemed binding on all successors, assigns, and lessees, regardless of whether a copy of this Covenant and Agreement has been attached to or incorporated into any given deed or lease.

1.4 Purpose. It is the purpose of this instrument to convey to the ACDEH and U.S. EPA real property rights, which will run with the land, to facilitate the remediation of past environmental contamination and to protect human health and the environment by reducing the risk of exposure to residual hazardous materials.

ARTICLE II DEFINITIONS

2.1 ACDEH and U.S. EPA. "ACDEH and U.S. EPA" shall mean the Alameda County Department of Environmental Health and U.S. Environmental Protection Agency and shall include its successor agencies, if any.

2.2 Improvements. "Improvements" shall mean all buildings, roads, driveways, regradings, and paved parking areas, constructed or placed upon any portion of the Site.

2.3 Occupants. "Occupants" shall mean Owners and those persons entitled by ownership, leasehold, or other legal relationship to the exclusive right to use and/or occupy all or any portion of the Site.

2.4 Owner or Owners. "Owner" or "Owners" shall mean the Covenantor and/or its successors in interest, who hold title to all or any portion of the Site.

ARTICLE III
DEVELOPMENT, USE AND CONVEYANCE OF THE SITE

3.1 Restrictions on Development and Use. Covenantor promises to restrict the use of the Site as follows:

Excavation or construction activities at the Property will require planning and implementation of appropriate health and safety procedures by the responsible party (or current property owner/developer) prior to and during excavation and construction activities. The Property is to be entered into the City of Oakland Permit Tracking System due to the residual contamination at the Property. Owners or Occupants of the Property or any portion thereof shall conduct any excavation work on the Property, in accordance with the Soil Management Plan prepared for the Site and after notifying in writing the ACDEH and U.S. EPA (the Soil Management Plan is included in the Operations and Maintenance Plan that is in Exhibit C). Any contaminated soils brought to the surface by grading, excavation, trenching, or backfilling shall be managed by Covenantor or his agent in accordance with all applicable provisions of local, state and federal law

- a) No Owners or Occupants of the Property or any portion thereof shall develop a garden for the purpose of growing plants for human consumption at any portion of the Site.
- b) All uses and development of the Site shall preserve the integrity of any TSCA Cap, any remedial measures taken or remedial equipment installed, and any groundwater monitoring system installed on the Site pursuant to the requirements of the ACDEH and U.S. EPA, unless otherwise expressly permitted in writing by the ACDEH and U.S. EPA.
- c) No Owners or Occupants of the Property or any portion thereof shall drill, bore, otherwise construct, or use a well for the purpose of extracting water for any use, including but not limited to, domestic, potable, irrigation, or industrial uses, unless expressly permitted in writing by the ACDEH and U.S. EPA.
 - a. The Owner shall notify the ACDEH and U.S. EPA of each of the following:
 - (1) The type, cause, location and date of any disturbance to any portion of the TSCA Cap, any remedial measures taken or remedial equipment installed, and of the groundwater monitoring system installed on the Site pursuant to the requirements of the ACDEH and U.S. EPA, which could affect the ability of such TSCA Cap or remedial measures, remedial equipment, or monitoring system to perform their respective functions and
 - (2) the type and date of repair of such disturbance. Notification to the ACDEH and U.S. EPA shall be made by registered mail within ten (10) working days of both the discovery of such disturbance and the completion of repairs;
- d) The Covenantor agrees that the ACDEH and U.S. EPA, and/or any persons acting pursuant to ACDEH and U.S. EPA orders, shall have reasonable access to the Site for the purposes of inspection, surveillance, maintenance, or monitoring,.

- e) No Owner or Occupant of the Site shall act in any manner that will aggravate or contribute to the existing environmental conditions of the Site. All use and development of the Site shall preserve the integrity of any capped areas.

3.2 Enforcement. Failure of an Owner or Occupant to comply with any of the restrictions, as set forth in paragraph 3.1, shall be grounds for the ACDEH and U.S. EPA, by reason of this Covenant, to have the authority to require that the Owner modify or remove any Improvements constructed in violation of that paragraph. Violation of the Covenant shall be grounds for the ACDEH and U.S. EPA to file civil actions against the Owner as provided by law.

3.3 Notice in Agreements. After the date of recordation hereof, all Owners and Occupants shall execute a written instrument which shall accompany all purchase agreements or leases relating to the property. Any such instrument shall contain the following statement:

The land described herein contains hazardous materials in soils and in the groundwater under the property, and is subject to a deed restriction dated as of _____, 2011 and recorded on _____, 2011 in the Official Records of Alameda County, California, as Document No. _____, which Covenant and Restriction imposes certain covenants, conditions, and restrictions on usage of the property described herein. This statement is not a declaration that a hazard exists.

ARTICLE IV
VARIANCE AND TERMINATION

4.1 Variance. Any Owner or, with the Owner's consent, any Occupant of the Site or any portion thereof may apply to the ACDEH and U.S. EPA for a written variance from the provisions of this Covenant.

4.2 Termination. Any Owner or, with the Owner's consent, any Occupant of the Site or a portion thereof may apply to the ACDEH and U.S. EPA for a termination of the Restrictions as they apply to all or any portion of the Site.

4.3 Term. Unless terminated in accordance with paragraph 4.2 above, by law or otherwise, this Covenant shall continue in effect in perpetuity.

ARTICLE V
MISCELLANEOUS

5.1 No Dedication Intended. Nothing set forth herein shall be construed to be a gift or dedication, or offer of a gift or dedication, of the Site or any portion thereof to the general public.

5.2 Notices. Whenever any person gives or serves any notice, demand, or other communication with respect to this Covenant, each such notice, demand, or other communication shall be in writing and shall be deemed effective (1) when delivered, if personally delivered to the person being served or official of a government agency being served, or (2) three (3) business days after deposit in the mail if mailed by United States mail, postage paid certified, return receipt requested:

If To: "Covenantor"

College for Certain, LLC - Aspire Public Schools
1001 22nd Avenue; Suite 100
Oakland, California 94606

If To: "ACDEH and U.S. EPA"

Alameda County Department
of Environmental Health
1131 Harbor Bay Parkway, Suite 250
Alameda, California 94502-6577
Attention: Paresh Khatri

U.S. Environmental Protection Agency, Region 9
Mail Code WST-5
75 Hawthorne Street
San Francisco, CA 94105
Attention: Ms. Carmen Santos

5.3 Partial Invalidity. If any portion of the Restrictions or terms set forth herein is determined to be invalid for any reason, the remaining portion shall remain in full force and effect as if such portion had not been included herein.

5.4 Article Headings. Headings at the beginning of each numbered article of this Covenant are solely for the convenience of the parties and are not a part of the Covenant.

5.5 Recordation. This instrument shall be executed by the Covenantor and by the Executive Officer of the ACDEH and U.S. EPA. This instrument shall be recorded by the Covenantor in the County of Alameda within ten (10) days of the date of execution.

5.6 References. All references to Code sections include successor provisions.

5.7 Construction. Any general rule of construction to the contrary notwithstanding, this instrument shall be liberally construed in favor of the Covenant to ~~effect~~affect the purpose of this instrument and the policy and purpose of the ACDEH and U.S. EPA. If any provision of this instrument is found to be ambiguous, an interpretation consistent with the purpose of this instrument that would render the provision valid shall be favored over any interpretation that would render it invalid.

IN WITNESS WHEREOF, the parties execute this Covenant as of the date set forth above.

Covenantor: College For Certain LLC – Aspire Public Schools

By: _____
Title: _____
Date: _____

Agencies:

Alameda County Department of Environmental Health

By: _____
Title: _____
Date: _____

U.S. Environmental Protection Agency, Region 9

By: _____
Title: _____
Date: _____

STATE OF CALIFORNIA)
COUNTY OF Alameda)

On _____, 20__ before me, the undersigned a Notary Public in and for said state, personally appeared [Covenantor], personally known to me or proved to me on the basis of satisfactory evidence to be the person who executed the within instrument.

WITNESS my hand and official seal.

Notary Public in and for said
County and State

STATE OF CALIFORNIA)
COUNTY OF Alameda)

On _____, 20__ before me, the undersigned a Notary Public in and for said state, personally appeared [EXECUTIVE OFFICER], personally known to me or proved to me on the basis of satisfactory evidence to be the person who executed the within instrument.

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Notary Public in and for said
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COUNTY OF Alameda)

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Notary Public in and for said
County and State

EXHIBIT A
LEGAL DESCRIPTION OF PROPERTY
EXHIBIT B
DESCRIPTION OF TSCA CAP
EXHIBIT C
OPERATION AND MAINTENANCE PLAN